

9/11 of India: A Critical Review on Armed Forces Special Power Act (Afspa), and Human Right Violation in North East India

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Abstract

The Central Government of India had always a policy difference for the North Eastern States. While introducing AFSPA in the Parliament, authorizing martial law in the North-east Region, the then Union Home Minister justified the Act as a temporary measure to contain the uprising in the Naga Hills. But five decades later, large part of the Northeast is still declared 'disturbed' under the Act and the civilian population is still under grip of the military rule. Thousands of lives have been extinguished in enforced disappearances and extrajudicial executions. Torture, rape, arbitrary detention, forced migration and displacement has become part of life. An attempt has been made in this paper to find that this draconian law is applied for last fifty years to people whose features are mongoloid and different from the rest of the country. It is draconian and xenophobia law. There is a need to repeat the debate that AFSPA has failed to solve insurgency challenges; rather, it has only intensified the problem of human right for the people of north eastern state. There is an ideological debate on the subject of why youngsters take up arms. How can we solve the problem without using armed violence? It will be worth focusing on other alternative to solve the five decades old socio-political crisis of North East India region.

Keywords: North East India; counter insurgency; AFSPA; Human right violence

Introduction

India has failed to implement the concrete recommendations made by a UN human rights mechanism, enacting only 67 out of its 168 recommendations, which paints a grim picture of human rights in the country. For too long humanity has tolerated physical torture as a form of human rights abuse.

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Conspicuous in every society from the medieval to modern times, human rights violations have accentuated human suffering through centuries. Seldom do we come across a region akin to India's North East where rights violations are discreetly covered up by the law of the state. The Armed Forces Special Power Act (AFSPA), introduced to curb insurgency in the remote jungles of the far flung areas, has remained a telling tale of agony. After having been subjected to indiscriminate abuse of that law, the people of the North East have been demanding its revocation for a long time. This paper is a modest attempt to study Human Rights violations in the North East of India under the shadow of the AFSPA.

India has had and continues to have a veritable spectrum of draconian laws that are supposedly aimed at stopping terrorism but are used effectively by state agents to abuse human rights. These laws include the Maintenance of Internal Security Act (MISA), Terrorist and Disruptive Activities (Prevention) Act (TADA), Prevention of Terrorism Act (POTA), the Disturbed Areas Act (DAA), and the Armed Forces Special Powers Act (AFSPA), the Assam Preventive Detention Act, National Security Act, Essential Services Maintenance Act and the Armed Forces (Jammu and Kashmir) Special Powers Act (1990). While these laws are implemented all over India, they have the most deplorable effects on the human rights of minorities, vulnerable communities in areas where people have opposed these laws.

India is popularly considered as a nation which gives due importance to the rights and liberties of its citizens. It has absorbed the ideals of democracy in its truest sense. The Government is indeed "by the people, to the people and for the people". However, it is difficult to imagine that in a country like ours, exists a law which makes a mockery of the basic human rights. The recent violence in Kashmir triggered a nationwide debate on the validity of the Armed Forces (Special Powers) Act, 1958, popularly known as AFSPA. First introduced in the states of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura, the act was later extended to Jammu and Kashmir in July 1990. It is a draconian law which gives unbridled powers to the armed forces.

Any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the armed forces is granted the right to shoot to kill based on mere suspicion that it is necessary to do so in order to "maintain the public order" in a "disturbed area".

The Introduction to the Act says that it has been enacted to assist State Governments which were incapable to maintain internal disturbance. However the act has been widely criticized by national and international human rights agencies. When United Nations Human Rights Committee questioned the validity of AFSPA in 1991 under Indian Law and in light of Article 4 of the International Covenant on Civil and Political Rights, the Indian Govt. harped on the fact that it is necessary to prevent the secession of the North Eastern states. A brief recap of history will tell us that these states were forcefully made a part of the Indian Republic after 1947 by signing various agreements with a view of their strategic significance. These states could never be fully integrated in our country's mainstream due to vast differences in social structure, culture, language, facial features and geographical remoteness. Furthermore, the government has been more or less indifferent towards the economic and social development of this region. Its main interest lied in exploiting its vast reservoir of natural resources. This bred secessionist tendencies in the people leaving in these regions leading to internal disturbances. AFSPA was introduced to curb this phenomenon and thus a vicious cycle has been initiated. The tyranny of armed forces compels people to demand freedom through violent means which in turns justifies the need for AFSPA.

The annual report of the Ministry of Home Affairs (GOI: 2011-12) shows (p 82) that the figure of crimes against women in India has gone up from 5102460 in 2006 to 6750748 in 2010. The figure includes both Indian Penal Code (IPC) cases and others under Special and Local Laws (SLL). The situation in the north-eastern states such as Manipur is especially grim with many serious human rights violations against women and children by the very police and security forces meant to safeguard them.

The 2001 *India Human Development* report had revealed that during 1991-98, the figure of 'rapes' in the northeast went up from 601 to 1,001; 'molestation' from 415 to 849; 'kidnapping and abduction' from 1,005 to 1,288; 'dowry deaths' from 21 to 43; and 'cruelty by relatives' from 240 to 862. 'Eve-teasing' declined from 16 cases to 13!

The all-India figures for these offences for the same period were: 'rapes' increased from 9,793 to 15,031; 'molestation' from 20,611 to 31,051; 'kidnapping and abduction' from 12,300 to 16,381; and 'cruelty by relatives' from 15,949 to 41,317.

'Eve-teasing' declined from 10,283 to 8,122 cases! The 2011 *India Human Development Report* does not contain any figures of violence against women!

AFSPA Controversy

To a layman, AFSPA indeed sounds like awarding the 'Right to Kill' to our armed forces. But it is the contents of the act that are flawed and misty. Firstly, it makes no distinction between a peaceful gathering of five or more people and a berserk mob. So, even innocents – who have no role in creating a situation that results in that region being called 'disturbed', also come under the purview of the law.

Secondly, the law also states that, "no prosecution can be initiated against an officer without the previous sanction of the Central government". Purportedly, the logic behind the inclusion of this section is, to protect the officers from frivolous and misguided allegations. The government is usually not very fluid in giving this much-needed sanction, in order to express their faith in the armed forces and protect their interests.

Thirdly, the decision of the government to declare a particular area 'disturbed' cannot be challenged in a court of law. This has been the heart of the problem. As the recent situation in Kashmir seems to go out of hand, leaders have now suggested that the act must be repealed from certain provinces – citing the reason that the imminent threat, due to which AFSPA was enforced in that province in the first place, has been neutralized over the years. Certainly, the reasoning is specious – it is nothing more than a tactic to appease the population and pacify their agitated sentiments. If the threat has indeed been neutralized, then why not declare the region as 'not disturbed', which will by itself conclude the role of the army?

AFSPA in North East India and Mockery Human Right

The powers that the AFSPA extends to the armed forces come into force once an area subject to the Act has been declared "disturbed" by the central or state government. This declaration is not subject to judicial review.

The right to life is violated by section 4(a) of the AFSPA, which grants the armed forces power to shoot to kill in law enforcement situations without regard to international human rights law restrictions on the use of lethal force.

Lethal force is broadly permitted under the AFSPA if the target is part of an assembly of five or more persons, holding weapons, or "carrying things capable of being used as weapons". The terms "assembly" and "weapon" are not defined.

The right to liberty and security of person is violated by section 4(c) of the AFSPA, which fails to protect against arbitrary arrest by allowing soldiers to arrest anyone merely on suspicion that a "cognizable offence" has already taken place or is likely to take place in the future. Further, the AFSPA provides no specific time limit for handing arrested persons to the nearest police station. Section 5 of the AFSPA vaguely advises that those arrested be transferred to police custody "with the least possible delay."

The right to remedy is violated by section 6 of the AFSPA, which provides officers who abuse their powers under the AFSPA with immunity from legal accountability. This section of the AFSPA prohibits even state governments from initiating legal proceedings against the armed forces on behalf of their population without central government approval. Since such a sanction is seldom granted, it has in effect provided a shield of immunity for armed forces personnel implicated in serious abuses.

In practice the AFSPA also facilitates violation of the right to be free from torture, and from cruel or degrading treatment. Since the AFSPA provides powers to arrest without warrant and then detain arrested persons for unspecified amounts of time, the armed forces routinely engage in torture and other ill-treatment during interrogation in army barracks.

Areas declared "disturbed" under the AFSPA over the past 50 years vary significantly according to their conflict history, ethnic constituency, and levels of militancy. However, all these areas share a common experience of widespread human rights abuses during the imposition of the AFSPA. The AFSPA has also had the opposite effect to that intended by the Indian government: in each state where the AFSPA has been implemented and soldiers have been deployed, the armed forces have become a symbol of oppression and an object of hate.

Human rights violations have served to fuel conflicts and act as a recruiting sergeant for militant groups in many parts of the country.

Arbitrary detention, torture, and the killing of peaceful critics have had the effect of closing democratic and peaceful paths of opposition, forcing organizations underground and fueling a growth in militancy.

It is estimated that over 70 armed opposition groups may be operating across the northeast alone. While the conflict has died down in Punjab, there are numerous militant groups operating in Jammu and Kashmir.

Arunachal Pradesh

In Arunachal Pradesh, the areas that border with Assam have been declared disturbed. Violence in the state is largely directed toward the Chakma and Hajong tribal populations that migrated from Bangladesh (then East Pakistan) in the 1960s. In addition to the local anti-immigrant movement, insurgent groups from neighboring Assam and Nagaland reportedly have a significant presence, particularly in the Changlang district. Many civilians have been victims of violence committed by militants from neighboring states and by the security forces. For example, Indian security forces assaulted villagers of Borduria during a search for National Socialist Council of Nagaland (NSCN) militants on June 5, 2002.

Assam

Although parts of Assam came under AFSPA in 1958, the entire state of Assam was declared a disturbed area in November 1990 when fresh violence started in the state.¹⁹ Militancy first broke out in 1979 with the emergence of the United Liberation Front of Assam (ULFA), established in reaction to large-scale immigration from Bangladesh. ULFA remains the principal insurgent group in Assam. A second round of insurgency emerged in the 1980s with the Bodo tribal groups calling for a separate state. This movement is led principally by the National Democratic Front of Bodoland (NDFB). Despite peace processes engaging insurgent groups and the Indian government, violence remains common in Assam.

The armed forces carry out abuses in the name of counterinsurgency operations and are shielded from accountability by the AFSPA. One of the starkest abuses under the AFSPA in Assam has been the imprisonment of young children. More than children between the ages of four and 12 have languished in different jails across the state.

The unarmed children and their mothers were first detained by Bhutanese soldiers in a 2003 counterinsurgency operation against militant bases in Bhutan.

They were then handed over to Indian authorities and jailed. The children have grown up behind bars with their only crime being that they are children of suspected separatists.

Children have also suffered sexual violence at the hands of the armed forces. A 12-year-old girl was raped by a member of the Assam Rifles in Karbi Anglong on February 7, 2005. Medical tests confirmed that the abuse was sustained after the child was sedated with sleeping tablets. Fearing a backlash against the military and the AFSPA similar to that which followed the death of Manorama Devi in Manipur, police arrested the accused and his accomplices. Local women's groups are demanding justice emphasizing that the usual token monetary compensation for such heinous crimes committed by security personnel is unacceptable.

Assam accounts for nearly half of the country's encounter deaths registered by the National Human Rights Commission, government statistics show. Of the 183 alleged fake encounter deaths (by the police, army and paramilitary forces) registered last year, 87 took place in Assam. Besides, recorded cases have increased considerably in the past three years. The 31 cases registered in 2009-10 rose to 54 in 2010-11, which again rose by over 50 per cent to 87 cases.

Manipur

Sections of Manipur were declared disturbed areas after the 1958 adoption of the AFSPA, and the entire state of Manipur was brought under the act on September 8, 1980.²⁵ While Naga tribes in Manipur supported the Naga armed rebellion, other ethnic groups in Manipur also began a separatist campaign against the merging of their state with the Indian Union in 1949. The conflict has evolved to include numerous insurgent groups with various ethnic and tribal affiliations. Conflicts between different tribal and ethnic groups have also emerged, leading to devastating attacks upon civilians and rampant extortion. Conflict triggers include perceived threats to land distribution, rises in taxes and perceptions of inequity between tribes.

Human rights violations by security forces engaged in counterinsurgency operations in Manipur have occurred with depressing regularity over the last five decades.

Torture, which includes beatings, electric shocks, and simulated drowning, is common. Arbitrary arrests and extrajudicial executions continue. New "disappearances" stopped after the Manipur government introduced a system for providing "arrest memos" but at least people remain missing since they "disappeared" in the 1980s and 1990s.

In Manipur in July 2012, an organisation of widows and mothers of those killed in 'encounters' with security forces, the Extra-judicial Execution Victim Families Association, Manipur (EEVFAM), with Neena Ningombam as secretary, appealed to the Supreme Court of India for justice for the innocents killed by police commandos and security forces such as the Assam Rifles, under cover of the immunity provisions of AFSPA. The organisation has asked for an independent probe into 1,528 cases of extra-judicial execution by security forces in Manipur (*North East Sun*, November 15, 2012). It is alleged that 1,528 people including 31 women and 98 children have been killed in the name of 'encounters' with militants by security forces between 1979 and May 2012. Of these, 419 were killed by Assam Rifles and 481 by combined teams of Manipur police commandos and central armed police forces. Ningombam's husband Michael was killed on November 4, 2008 by Manipur police commandos who branded him a terrorist. A district judge appointed by the Guwahati High Court has found that Michael was not guilty of initiating the firing as alleged by the Manipur police commandos.

Manipuris have long campaigned for the repeal of the AFSPA, a few engaging in acts of desperation including self-immolation and stripping naked in front of an army camp. Irom Sharmila, a human rights activist, has been on a fast until death since 2000, kept alive by being force-fed by doctors while in judicial custody. Opposition to the AFSPA came to a head following the killing of Thangjam Manorama Devi in July 2004. After being arrested by members of the Assam Rifles, Manorama was found dead near her house in the Ngariyan area the next morning. She had been shot through the lower half of her body, leading to suspicion that bullet wounds had been used to hide evidence of rape. For several weeks following Manorama's killing, ordinary Manipuris joined in protest demonstrations calling for repeal of the AFSPA.

Meghalaya

The roots of discord in Meghalaya can largely be attributed to rivalry between tribal residents and the mostly non-tribal immigrants from Bangladesh that began trickling in after the 1947 partition of India. Militancy erupted in the late 1980s. A 20-kilometer-wide belt in Meghalaya bordering Assam was declared a disturbed area in November 1990.

The armed forces have committed numerous atrocities against civilians in Meghalaya under the auspices of the AFSPA. During “Operation Birdie” in 1997-98, many Khasi tribal women were reportedly raped. The Assam Rifles also used women as human shields, in violation of the laws of war, in a retaliation attack on the NSCN. The soldiers placed the muzzle of their guns on the women’s shoulders as they battled with the rebels. While the violence in Meghalaya has largely died down, widespread allegations of arbitrary detention, rape, and torture have never been properly investigated.

Mizoram

Mizoram was declared a disturbed area in January 1967. Following the signing of a peace accord in June 1986, the AFSPA is no longer applied in Mizoram, though it remains a “sleeping” law.

A devastating famine in the early 1960s and perceived government neglect resulted in an armed independence struggle by the Mizo National Front (MNF), which was initially formed as a relief organization.³⁶ During the 20-year conflict the rights of Mizos were restricted and violated under cover of the AFSPA with widespread allegations of torture, rape, extrajudicial killings, and arbitrary detention.

As in other areas militarized under the AFSPA, women in Mizoram were particularly vulnerable to violations by security personnel, including rape, sexual violence, and arbitrary detention. For example, a woman named Lianthanguanga was raped by five soldiers when she was 13 years old. She managed to escape but then suffered the further trauma of witnessing her father being tortured by the army. He died as a result of his injuries.

In recounting what had happened 30 years before, Lianthangvuanga revealed that for years she had not talked about her experience with anyone because family members and her community had chosen to “forget” the experience. She was left feeling shameful of herself for being violated by the officers.

Nagaland

Many ethnic Nagas opposed Indian rule following the British withdrawal from the region in 1947. Initially seeking political means to secure self-governance, people of the Naga Hills united under the banner of the Naga National Council (NNC). While India proclaimed the Naga Territory as part of the Indian Union, the NNC declared independence for Nagaland and embarked upon an armed struggle. The AFSPA was enacted in 1958 to end the separatist armed campaign.

The NNC later fractured and was eventually overshadowed by the National Socialist Council of Nagaland (NSCN), which became the main insurgency group in the northeast by 1980. The NSCN has since split into two key opposing factions, the NSCN-IM and the NSCN-K, with clashes between the two resulting in many deaths. The Nagaland population has suffered the most from the armed forces and militant groups operating in the state.³⁹ As Naga writer Temsula Ao put it, “There are no winners, only victims and the results can be measured only in human terms. For the victims the trauma goes beyond the realm of just the physical maiming and the loss of life—their very humanity is assaulted and violated, and the onslaught leaves the survivors scarred both in mind and soul.”

Civilians in Nagaland complain of the misuse of the AFSPA under which they have lived for 50 years. The presence of the armed forces is a part of their everyday life. Violence has affected almost every family. Soldiers have been responsible for untold killings and “disappearances,” and for sexual abuse and rape of women.

A particularly disturbing example of the volatile environment that has developed in areas militarized under the AFSPA is the 1995 killings in Kohima city. Soldiers began shooting indiscriminately after mistaking the sound of a tire bursting for a bomb attack. Seven civilians, including girls age three and eight, were killed in the hour-long firing that ensued. A further 22 were seriously injured, including seven children.

Tripura

The AFSPA was extended to Tripura state in November 1970.⁴⁴ At present, the hill district of the state, the Tripura Tribal Autonomous District Council, remains declared a “disturbed” area. Insurgency in Tripura developed in response to an influx of immigrants from Bangladesh. The indigenous tribal population was reduced to 31 percent by 1991, and forced into the hilly interior regions, while immigrants dominated government jobs and local businesses. A tribal insurgency, led by the All Tripura Tiger Force (ATTF) and the National Liberation Front of Tripura (NLFT), continues to the present.

Crimes against tribal women by the security forces have been a feature of the conflict in Tripura. One of the most widely known incidents was the 1988 gang rape of 14 tribal women in Ujanmaidan by the Assam Rifles. Rape and sexual violence have continued in Tripura state. Three tribal women were allegedly gang raped by the Assam Rifles in Dhalai district during a search operation on February 9, 2006. Several girls were also molested. One of the rape victims was pregnant and suffered a miscarriage following the incident.

The AFSPA and Impunity

Impunity occurs when perpetrators of human rights violations are not held accountable by the state for their actions. Impunity can be divided into two types. De facto impunity takes place when the state fails to prosecute for lack of capacity or will, often for political reasons, such as state support for the abuses or to protect high ranking officials or state institutions. De facto impunity has been rampant in India, where in even well-documented abuse cases there is no political will to prosecute.

The second kind of impunity is de jure impunity, in which laws or regulations providing immunity or amnesty make it difficult or impossible to prosecute a perpetrator for human rights abuses. India has several such provisions in its laws, aimed at shielding its military personnel and civilian officials from legal accountability. Such laws are contrary to the right to a remedy and reparation for gross violations of international human rights law.

Both forms of impunity lead to more human rights violations and undermine faith in the government and security forces; de jure impunity sends a particularly negative signal to victims about state indifference to and complicity in their suffering.

Among the worst immunity provisions provided under Indian law is the one that protects those operating under the AFSPA. It is often used to prevent civilian prosecutors from prosecuting soldiers. AFSPA requires prior approval of the central government for civilian prosecutions of military personnel. That approval is seldom forthcoming. This has occurred, for instance, in the Manorama case in Manipur and in several well-known cases in Jammu and Kashmir.

The Indian government claims that the soldiers responsible for human rights violations have to face military courts. Under the Army Act, the military may transfer a soldier from civilian to military custody for offenses that can be tried by a court martial.

India should not allow the future to be dominated by violent paradigm such as the continuing use of AFSPA. It is time India gives space for Democracy and its cherished values to reemerge instead of suppressing the genuine democratic voice of "We the people" which continues to remain excluded under the tyrannous rule.

Conclusion

India is a signatory to the International Covenant on Civil and Political Rights [ICCPR]. As far back as 1997, the Human Rights Committee established under the Covenant, expressed its dismay that "some parts of India have remained subject to declaration as disturbed areas over many years." India, in effect, said the report, uses emergency powers for long periods without following procedures spelt out in a Covenant to which it is a signatory (United Nations 1997). The reference is to Articles 3 and 4 of the ICCPR. In Article 3 the state parties "undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant." But in times of "public emergency which threatens the life of the nation," they may "take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation." However, the right to life and the norms regarding the prohibition of torture, slavery and servitude are non-derogable.

A state "availing itself of the right of derogation" is required to "immediately inform the other State Parties" through the intermediary of the UN Secretary General about "the provisions from which it has derogated and of the reasons by which it was actuated." The ICCPR assumes that such measures are exceptional and temporary. Governments therefore are required to communicate the date when such derogation is terminated (United Nations, 1966). The Human Rights Committee recommended that AFSPA and its use "be closely monitored so as to ensure its strict compliance with the provisions of the Covenant" (United Nations 1997).

Unquestionably, there have been killings and human rights violation, in both Kashmir and the North-East, as a direct result of AFSPA. But the opinions are mixed. The Joint Chiefs have repeatedly reasserted that even partial revocation of AFSPA will greatly curtail the freedom of the army, to carry out operations. According to them, a soldier deserves all the legal protection he can get, for the result of any action/decision he takes on the spot, acting in the best interests of the situation. While the politicians, as said earlier, are bent upon diluting AFSPA and scoring some political brownie points.

More than 80 civilian deaths have been reported in Kashmir, since June 11. While on the other hand, the North-East has been the victim of this state of play for the past 56 years. Instances of mass killings of people and custody deaths, like that of Th. Manorama, have been catalyzing the protests. Irom Sharmila has been fasting, for over a decade, demanding the annulment of AFSPA from Manipur and other parts of the North-East. But evidently her pleas seem to land on deaf ears.

A police investigation in 2011 by the Jammu and Kashmir State Human Rights Commission (SHRC) found 2,730 bodies dumped into unmarked graves at 38 sites in north Kashmir. At least 574 were identified as the bodies of local Kashmiris. The government had previously said that the graves held unidentified militants, most of them Pakistanis whose bodies had been handed over to village authorities for burial. Many Kashmiris believe that some graves contain the bodies of victims of enforced disappearances.

The AFSPA is a symbol of abuse, oppression, and discrimination. Its application and misuse has fueled a cycle of atrocity and impunity and inflamed passions for militancy in various parts of the country. The growth of militant groups under the 50- year application of the AFSPA is evidence that countering armed insurgency with disregard for human rights is ineffective. Human Rights Watch is not alone in calling for repeal of the AFSPA. Human rights groups in India have called for repeal for decades. Other Indian voices calling for repeal have included the:

B.P. Jeevan Reddy Committee (2005);

- Administrative Reforms Committee headed by Veerappan Moily (2007); and
- Working Group on Confidence-Building Measures in Jammu and

Kashmir headed by Mohammad Hamid Ansari (2007).

In 1997, the UN Human Rights Committee expressed concern regarding the continuing reliance on the AFSPA and at human rights violations by security personnel in areas declared "disturbed." It expressed concern about the "climate of impunity" and lack of remedies resulting from the requirement of government approval for legal proceedings against armed forces acting under special powers. The Committee recommended that this requirement be abolished.

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